

REFERENCE TITLE: **limited liability companies; ownership interests**

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

SB 1233

Introduced by
Senator Driggs

AN ACT

AMENDING SECTION 29-632, ARIZONA REVISED STATUTES; AMENDING TITLE 29, CHAPTER 4, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING SECTION 29-732.01; RELATING TO LIMITED LIABILITY COMPANIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 29-632, Arizona Revised Statutes, is amended to
3 read:

4 29-632. Articles of organization

5 A. The articles of organization shall state:

6 1. The name of the limited liability company.

7 2. The name, street address in this state and signature of the agent
8 for service of process required to be maintained by section 29-604.

9 3. The address of the LIMITED LIABILITY company's known place of
10 business in this state, if different from the street address of the company's
11 statutory agent.

12 4. The latest date, if any, on which the limited liability company
13 must dissolve.

14 5. Either of the following statements:

15 (a) Management of the limited liability company is vested in a manager
16 or managers.

17 (b) Management of the limited liability company is reserved to the
18 members.

19 6. The name and address of either of the following:

20 (a) If management of the limited liability company is vested in a
21 manager or managers, each person who is a manager of the limited liability
22 company and each member who owns, EITHER SEPARATELY OR AS A CO-OWNER WITH
23 OTHERS, a twenty per cent or greater interest in the capital or profits of
24 the limited liability company.

25 (b) If management of the limited liability company is reserved to the
26 members, each person who is a member of the limited liability company.

27 B. The articles of organization may include any other provision that
28 is consistent with law, including any provisions under this chapter that are
29 required or permitted to be set out in an operating agreement of the limited
30 liability company.

31 C. It is not necessary to set out in the articles of organization any
32 of the powers enumerated in this chapter.

33 Sec. 2. Title 29, chapter 4, article 6, Arizona Revised Statutes, is
34 amended by adding section 29-732.01, to read:

35 29-732.01. Ownership of interest in limited liability company
36 in joint tenancy or community property with right
37 of survivorship

38 A. EXCEPT AS PROHIBITED OR RESTRICTED IN AN OPERATING AGREEMENT, AN
39 INTEREST IN A LIMITED LIABILITY COMPANY MAY BE HELD BY TWO OR MORE NATURAL
40 PERSONS AS JOINT TENANTS WITH RIGHT OF SURVIVORSHIP OR BY A MARRIED COUPLE AS
41 COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP. EXCEPT AS OTHERWISE PROVIDED
42 IN THIS SECTION OR IN AN OPERATING AGREEMENT, AN ASSIGNMENT OR ISSUANCE OF AN
43 INTEREST IN A LIMITED LIABILITY COMPANY TO TWO OR MORE NATURAL PERSONS
44 CREATES A TENANCY IN COMMON, EXCEPT AN ASSIGNMENT OR ISSUANCE TO A MARRIED
45 COUPLE.

1 B. A JOINT TENANCY WITH RIGHT OF SURVIVORSHIP IS CREATED WHEN A
2 WRITTEN OPERATING AGREEMENT EXPRESSLY DECLARES THAT TWO OR MORE NATURAL
3 PERSONS HOLD AN INTEREST IN A LIMITED LIABILITY COMPANY AS JOINT TENANTS WITH
4 RIGHT OF SURVIVORSHIP OR IN JOINT TENANCY WITH RIGHT OF SURVIVORSHIP. EXCEPT
5 AS PROHIBITED OR RESTRICTED IN AN OPERATING AGREEMENT, A JOINT TENANCY WITH
6 RIGHT OF SURVIVORSHIP MAY ALSO BE CREATED BY A WRITTEN ASSIGNMENT OF AN
7 INTEREST IN A LIMITED LIABILITY COMPANY TO TWO OR MORE NATURAL PERSONS, WHO
8 MAY INCLUDE ONE OR MORE ASSIGNORS, OR BY THE ARTICLES OF ORGANIZATION OF THE
9 LIMITED LIABILITY COMPANY IF THE WRITTEN ASSIGNMENT OR THE ARTICLES OF
10 ORGANIZATION HAVE BEEN SIGNED BY EACH JOINT TENANT AND CONTAIN THE EXPRESS
11 WRITTEN DECLARATION THAT THE JOINT TENANTS HOLD THE ASSIGNED INTEREST AS
12 JOINT TENANTS WITH RIGHT OF SURVIVORSHIP OR IN JOINT TENANCY WITH RIGHT OF
13 SURVIVORSHIP.

14 C. AN ESTATE IN COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP IS
15 CREATED WHEN A WRITTEN OPERATING AGREEMENT EXPRESSLY DECLARES THAT A MARRIED
16 COUPLE HOLDS AN INTEREST IN A LIMITED LIABILITY COMPANY AS COMMUNITY PROPERTY
17 WITH RIGHT OF SURVIVORSHIP. EXCEPT AS PROHIBITED OR RESTRICTED IN AN
18 OPERATING AGREEMENT, AN ESTATE IN COMMUNITY PROPERTY WITH RIGHT OF
19 SURVIVORSHIP MAY ALSO BE CREATED BY A WRITTEN ASSIGNMENT OF AN INTEREST IN A
20 LIMITED LIABILITY COMPANY TO A MARRIED COUPLE, WHO MAY INCLUDE ONE OR BOTH
21 ASSIGNOR SPOUSES, OR BY THE ARTICLES OF ORGANIZATION OF THE LIMITED LIABILITY
22 COMPANY IF THE WRITTEN ASSIGNMENT OR THE ARTICLES OF ORGANIZATION HAVE BEEN
23 SIGNED BY EACH SPOUSE AND CONTAIN THE EXPRESS WRITTEN DECLARATION THAT THE
24 MARRIED COUPLE HOLDS THE ASSIGNED INTEREST AS COMMUNITY PROPERTY WITH RIGHT
25 OF SURVIVORSHIP.

26 D. ALL CO-OWNERS OF AN INTEREST IN A LIMITED LIABILITY COMPANY HELD AS
27 JOINT TENANTS WITH RIGHT OF SURVIVORSHIP, AS COMMUNITY PROPERTY OR AS
28 COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP SHALL OWN AN EQUAL UNDIVIDED
29 INTEREST IN THE INTEREST. EACH CO-OWNER OF AN INTEREST IN A LIMITED
30 LIABILITY COMPANY, WHETHER THE INTEREST IS HELD AS TENANTS IN COMMON, JOINT
31 TENANTS WITH RIGHT OF SURVIVORSHIP, COMMUNITY PROPERTY OR COMMUNITY PROPERTY
32 WITH RIGHT OF SURVIVORSHIP, SHALL HAVE ONLY THE RIGHTS OF AN ASSIGNEE WITH
33 RESPECT TO THE INTEREST, BOTH DURING THE LIFETIME AND FOLLOWING THE DEATH OF
34 ANY OTHER CO-OWNER, UNLESS AND UNTIL THE CO-OWNER IS ADMITTED AS A MEMBER IN
35 ACCORDANCE WITH SECTION 29-731.

36 E. IF AN INTEREST IN A LIMITED LIABILITY COMPANY IS HELD BY TWO OR
37 MORE PERSONS IN JOINT TENANCY WITH RIGHT OF SURVIVORSHIP OR BY A MARRIED
38 COUPLE AS COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP, AFTER THE DEATH OF A
39 CO-OWNER OF THE INTEREST:

40 1. THE SURVIVING CO-OWNER OR CO-OWNERS OF THE INTEREST SHALL SUCCEED
41 TO THE OWNERSHIP OF THE DECEDENT'S INTEREST IN THE LIMITED LIABILITY COMPANY
42 WITHOUT FURTHER ACTION BY THE LIMITED LIABILITY COMPANY OR THE OTHER MEMBERS.

43 2. THE INTEREST IN THE LIMITED LIABILITY COMPANY IN THE HANDS OF THE
44 SURVIVING CO-OWNER OR CO-OWNERS SHALL CONTINUE TO BE SUBJECT TO ALL
45 OBLIGATIONS AND LIABILITIES TO WHICH THAT INTEREST WAS SUBJECT IMMEDIATELY

1 BEFORE THE DEATH UNDER THE TERMS OF THE OPERATING AGREEMENT OR OTHER
2 AGREEMENT AMONG ONE OR MORE MEMBERS OR THIRD PARTIES.

3 3. IF THERE IS MORE THAN ONE SURVIVING CO-OWNER OF AN INTEREST HELD IN
4 JOINT TENANCY WITH RIGHT OF SURVIVORSHIP, AFTER THE DEATH OF A CO-OWNER THE
5 SURVIVING CO-OWNERS SHALL CONTINUE TO OWN THE INTEREST IN EQUAL SHARES AS
6 JOINT TENANTS WITH RIGHT OF SURVIVORSHIP.

7 F. EXCEPT AS OTHERWISE PROVIDED IN AN OPERATING AGREEMENT:

8 1. THE DISTRIBUTION, VOTING, APPROVAL AND OTHER MANAGEMENT RIGHTS WITH
9 RESPECT TO AN INTEREST IN A LIMITED LIABILITY COMPANY THAT IS CO-OWNED BY TWO
10 OR MORE PERSONS, WHETHER THE INTEREST IS HELD AS TENANTS IN COMMON, JOINT
11 TENANTS WITH RIGHT OF SURVIVORSHIP, COMMUNITY PROPERTY OR COMMUNITY PROPERTY
12 WITH RIGHT OF SURVIVORSHIP, SHALL BE THE SAME AS IF THE INTEREST WERE HELD BY
13 ONLY ONE PERSON.

14 2. EACH CO-OWNER OF AN INTEREST IN A LIMITED LIABILITY COMPANY WHO HAS
15 BEEN ADMITTED AS A MEMBER MAY EXERCISE ALL VOTING, APPROVAL AND OTHER
16 MANAGEMENT RIGHTS OF A MEMBER, INCLUDING THE RIGHT TO APPROVE AN AMENDMENT TO
17 THE OPERATING AGREEMENT, WITH RESPECT TO AN INTEREST HELD AS TENANCY IN
18 COMMON, JOINT TENANCY WITH RIGHT OF SURVIVORSHIP, COMMUNITY PROPERTY OR
19 COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP.

20 3. THE LIMITED LIABILITY COMPANY IS ENTITLED TO RELY IN GOOD FAITH ON
21 THE ACT OF A MEMBER THAT PURPORTS TO BE TAKEN IN THE EXERCISE OF ANY VOTING,
22 APPROVAL OR OTHER MANAGEMENT RIGHT, INCLUDING THE RIGHT TO APPROVE AN
23 AMENDMENT TO THE OPERATING AGREEMENT RELATING TO AN INTEREST IN A LIMITED
24 LIABILITY COMPANY THAT IS CO-OWNED BY THE MEMBER WITH ONE OR MORE OTHER
25 PERSONS, WHETHER THE INTEREST IS HELD AS TENANTS IN COMMON, JOINT TENANTS
26 WITH RIGHT OF SURVIVORSHIP, COMMUNITY PROPERTY OR COMMUNITY PROPERTY WITH
27 RIGHT OF SURVIVORSHIP.

28 G. IF A CO-OWNER OF AN INTEREST IN A LIMITED LIABILITY COMPANY HELD AS
29 JOINT TENANTS WITH RIGHT OF SURVIVORSHIP OR COMMUNITY PROPERTY WITH RIGHT OF
30 SURVIVORSHIP TRANSFERS PART OR ALL OF THE CO-OWNER'S SHARE OF THAT INTEREST,
31 THE RIGHT OF SURVIVORSHIP IS EXTINGUISHED AND THE CO-OWNERS OF THE INTEREST
32 AFTER THE TRANSFER HOLD THEIR SHARES OF THE INTEREST AS TENANTS IN COMMON,
33 EXCEPT AS OTHERWISE PROVIDED IN AN OPERATING AGREEMENT. IN THE CASE OF
34 COMMUNITY PROPERTY WITH RIGHT OF SURVIVORSHIP, THE RIGHT OF SURVIVORSHIP IS
35 ALSO EXTINGUISHED AS PROVIDED IN SECTION 14-2803 OR 14-2804 OR ON THE
36 DELIVERY TO THE LIMITED LIABILITY COMPANY, AT THE ADDRESS OF ITS KNOWN PLACE
37 OF BUSINESS IN THE RECORDS OF THE COMMISSION, OF AN AFFIDAVIT ENTITLED
38 "AFFIDAVIT TERMINATING RIGHT OF SURVIVORSHIP" THAT IS EXECUTED BY EITHER
39 SPOUSE UNDER OATH STATING THE SPOUSE'S INTENT TO TERMINATE THE RIGHT OF
40 SURVIVORSHIP AND DESCRIBING THE AFFECTED INTEREST IN THE LIMITED LIABILITY
41 COMPANY. THE DELIVERY OF THE AFFIDAVIT SHALL NOT EXTINGUISH THE COMMUNITY
42 PROPERTY INTEREST OF EITHER SPOUSE.

43 H. EXCEPT AS OTHERWISE PROVIDED IN AN OPERATING AGREEMENT, A LIMITED
44 LIABILITY COMPANY DOES NOT NEED TO GIVE EFFECT TO ANY CHANGE IN THE FORM OF
45 OWNERSHIP OF AN INTEREST IN THE LIMITED LIABILITY COMPANY OR TO ANY CREATION

1 OR EXTINGUISHMENT OF A RIGHT OF SURVIVORSHIP UNTIL THE LIMITED LIABILITY
2 COMPANY HAS RECEIVED WRITTEN NOTICE OF THE CHANGE IN THE FORM OF OWNERSHIP OR
3 OF THE CREATION OR THE EXTINGUISHMENT OF A RIGHT OF SURVIVORSHIP AT THE
4 ADDRESS OF ITS KNOWN PLACE OF BUSINESS IN THE RECORDS OF THE COMMISSION.

5 I. WITH RESPECT TO AN INTEREST IN A LIMITED LIABILITY COMPANY OWNED IN
6 JOINT TENANCY WITH RIGHT OF SURVIVORSHIP, TENANCY IN COMMON OR COMMUNITY
7 PROPERTY WITH OR WITHOUT RIGHT OF SURVIVORSHIP, IF A CHARGING ORDER FROM A
8 COURT OF COMPETENT JURISDICTION IS OBTAINED AGAINST A CO-OWNER'S SHARE OF THE
9 INTEREST, IT SHALL ATTACH ONLY TO THAT CO-OWNER'S SHARE OR PORTION OF THE
10 INTEREST AND NOT TO THE SHARE OR PORTION OF THE OTHER CO-OWNER OR CO-OWNERS.